

**NATIVE AMERICAN HERITAGE COMMISSION**

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October 4, 2012

Mr. Hector Guerra, Chief, Environmental Planning

**County of Tulare Resource Management Agency**

5961 South Mooney Boulevard  
Visalia, CA 93277-9394

Re: SCH#2012101010; CEQA Notice of Preparation (NOP); draft Environmental Impact Report (DEIR); for the "Harvest-Tulare Anaerobic Digester and Compressed Natural Gas Facility Project;" located in the City of Tulare area; Tulare County, California

Dear Mr. Guerra:

The Native American Heritage Commission (NAHC) is the State of California 'Trustee Agency' for the protection and preservation of Native American cultural resources pursuant to California Public Resources Code §21070 and affirmed by the Third Appellate Court in the case of EPIC v. Johnson (1985: 170 Cal App. 3<sup>rd</sup> 604).

This letter includes state and federal statutes relating to Native American historic properties or resources of religious and cultural significance to American Indian tribes and interested Native American individuals as 'consulting parties' under both state and federal law. State law also addresses the freedom of Native American Religious Expression in Public Resources Code §5097.9. This project is also subject to California Government Code Section 65352.3.

The California Environmental Quality Act (CEQA – CA Public Resources Code 21000-21177, amendments effective 3/18/2010) requires that any project that causes a substantial adverse change in the significance of an historical resource, that includes archaeological resources, is a 'significant effect' requiring the preparation of an Environmental Impact Report (EIR) per the CEQA Guidelines defines a significant impact on the environment as 'a substantial, or potentially substantial, adverse change in any of physical conditions within an area affected by the proposed project, including ... objects of historic or aesthetic significance.' In order to comply with this provision, the lead agency is required to assess whether the project will have an adverse impact on these resources within the 'area of potential effect (APE), and if so, to mitigate that effect. The NAHC recommends that the lead agency request that the NAHC do a Sacred Lands File search as part of the careful planning for the proposed project.

The NAHC "Sacred Sites," as defined by the Native American Heritage Commission and the California Legislature in California Public Resources Code §§5097.94(a) and 5097.96. Items in the NAHC Sacred Lands Inventory are confidential and exempt from the Public Records Act pursuant to California Government Code §6254 (r).

Early consultation with Native American tribes in your area is the best way to avoid unanticipated discoveries of cultural resources or burial sites once a project is underway.

Culturally affiliated tribes and individuals may have knowledge of the religious and cultural significance of the historic properties in the project area (e.g. APE). We strongly urge that you make contact with the list of Native American Contacts on the attached list of Native American contacts, to see if your proposed project might impact Native American cultural resources and to obtain their recommendations concerning the proposed project. Pursuant to CA Public Resources Code § 5097.95, the NAHC requests cooperation from other public agencies in order that the Native American consulting parties be provided pertinent project information. Consultation with Native American communities is also a matter of environmental justice as defined by California Government Code §65040.12(e). Pursuant to CA Public Resources Code §5097.95, the NAHC requests that pertinent project information be provided consulting tribal parties, including archaeological studies. The NAHC recommends *avoidance* as defined by CEQA Guidelines §15370(a) to pursuing a project that would damage or destroy Native American cultural resources and California Public Resources Code Section 21083.2 (Archaeological Resources) that requires documentation, data recovery of cultural resources, construction to avoid sites and the possible use of covenant easements to protect sites.

Furthermore, the NAHC if the proposed project is under the jurisdiction of the statutes and regulations of the National Environmental Policy Act (e.g. NEPA; 42 U.S.C. 4321-43351). Consultation with tribes and interested Native American consulting parties, on the NAHC list, should be conducted in compliance with the requirements of federal NEPA and Section 106 and 4(f) of federal NHPA (16 U.S.C. 470 *et seq.*), 36 CFR Part 800.3 (f) (2) & .5, the President's Council on Environmental Quality (CSQ, 42 U.S.C 4371 *et seq.* and NAGPRA (25 U.S.C. 3001-3013) as appropriate. The 1992 *Secretary of the Interiors Standards for the Treatment of Historic Properties* were revised so that they could be applied to all historic resource types included in the National Register of Historic Places and including cultural landscapes. Also, federal Executive Orders Nos. 11593 (preservation of cultural environment), 13175 (coordination & consultation) and 13007 (Sacred Sites) are helpful, supportive guides for Section 106 consultation. The aforementioned Secretary of the Interior's *Standards* include recommendations for all 'lead agencies' to consider the historic context of proposed projects and to "research" the cultural landscape that might include the 'area of potential effect.'

Confidentiality of "historic properties of religious and cultural significance" should also be considered as protected by California Government Code §6254( r) and may also be protected under Section 304 of the NHPA or at the Secretary of the Interior discretion if not eligible for listing on the National Register of Historic Places. The Secretary may also be advised by the federal Indian Religious Freedom Act (cf. 42 U.S.C., 1996) in issuing a decision on whether or not to disclose items of religious and/or cultural significance identified in or near the APEs and possibility threatened by proposed project activity.

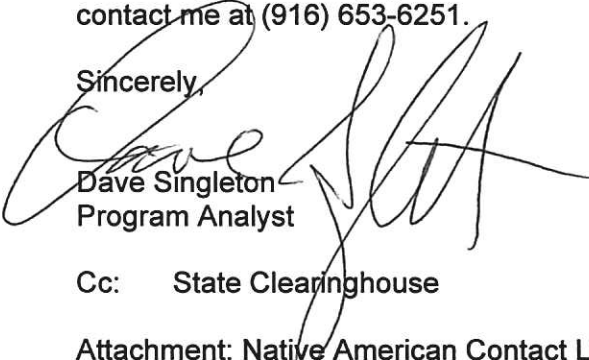
Furthermore, Public Resources Code Section 5097.98, California Government Code §27491 and Health & Safety Code Section 7050.5 provide for provisions for inadvertent discovery of human remains mandate the processes to be followed in the event of a discovery of human remains in a project location other than a 'dedicated cemetery'.

To be effective, consultation on specific projects must be the result of an ongoing relationship between Native American tribes and lead agencies, project proponents and their contractors, in the opinion of the NAHC. Regarding tribal consultation, a relationship built around regular meetings and informal involvement with local tribes will lead to more qualitative consultation tribal input on specific projects.

Finally, when Native American cultural sites and/or Native American burial sites are prevalent within the project site, the NAHC recommends 'avoidance' of the site as referenced by CEQA Guidelines Section 15370(a).

If you have any questions about this response to your request, please do not hesitate to contact me at (916) 653-6251.

Sincerely,



Dave Singleton  
Program Analyst

Cc: State Clearinghouse

Attachment: Native American Contact List

**Native American Contacts  
Tulare County  
October 4, 2012**

Santa Rosa Rancheria  
Rueben Barrios Sr., Chairperson  
P.O. Box 8  
Lemoore , CA 93245  
(559) 924-1278  
(559) 924-3583 Fax

Tache  
Tachi  
Yokut

Wuksache Indian Tribe/Eshom Valley Band  
Kenneth Woodrow, Chairperson  
1179 Rock Haven Ct.  
Salinas , CA 93906  
kwood8934@aol.com  
831-443-9702

Foothill Yokuts  
Mono  
Wuksache

Tule River Indian Tribe  
Neil Peyron, Chairperson  
P.O. Box 589  
Porterville , CA 93258  
chairman@tulerivertribe-nsn.  
(559) 781-4271  
(559) 781-4610 FAX

Yokuts

Tubatulabals of Kern Valley  
Robert L. Gomez, Jr., Tribal Chairperson  
P.O. Box 226  
Lake Isabella, CA 93240  
(760) 379-4590  
(760) 379-4592 FAX

Tubatulabal

Ron Wermuth  
P.O. Box 168  
Kernville , CA 93238  
warmoose@earthlink.net  
(760) 376-4240 - Home  
(916) 717-1176 - Cell

Tubatulabal  
Kawaiisu  
Koso  
Yokuts

Wuksache Tribe  
John Sartuche  
1028 East "K" Avenue  
Visalia , CA 93292  
signsbysarch@aol.com  
(559) 636-1136

Wuksache

Sierra Nevada Native American Coalition  
Lawrence Bill, Interim Chairperson  
P.O. 125  
Dunlap , CA 93621  
(559) 338-2354

Mono  
Foothill Yokuts  
Choinumni

Jennifer Malone  
637 E Lakeview  
Woodlake , CA 93286  
indianpopup@sbcglobal.net  
559-564-2146 - home  
559-280-0712 - cell

Wukchumni  
Tachi  
Yowlumni

This list is current only as of the date of this document.

Distribution of this list does not relieve any person of the statutory responsibility as defined in Section 7050.5 of the Health and Safety Code, Section 5097.94 of the Public Resources Code and Section 5097.98 of the Public Resources Code.

This list is applicable for contacting local Native Americans with regard to cultural resources for the proposed SCH#2012101010; CEQA Notice of Preparation (NOP); draft Environmental Impact Report (DEIR) for the Harvest AD and CNG Project; located in the City of Tulare area; Tulare County, California.

**Native American Contacts  
Tulare County  
October 4, 2012**

Santa Rosa Tachi Rancheria  
Lalo Franco, Cultural Coordinator  
P.O. Box 8                      Tachi  
Lemoore        , CA 93245      Tache  
(559) 924-1278 - Ext. 5       Yokut  
(559) 924-3583 - FAX

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